

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, :
: :
Plaintiff, : : Civil Action No.
v. : : 99-2496 (GK)
: :
PHILIP MORRIS USA INC., :
f/k/a PHILIP MORRIS Inc., et al., :
: :
Defendants. : :

MEMORANDUM OPINION

On July 9, 2004, Special Master Levie issued Report and Recommendation #164 ("R&R #155"), recommending that the Court grant in part and deny in part Joint Defendants' Third Motion to Compel Certain Documents Listed on Plaintiff's Executive Office of the President and Presidential Records Act Privilege Logs ("Motion"). Upon consideration of R&R #164, Joint Defendants' Partial Objection, the Government's Opposition, Joint Defendants' Reply, the Government's Partial Objection, Joint Defendants' Opposition, the Government's Reply, the applicable case law, and the entire record herein, the Court **overrules** the Joint Defendants' objection, **sustains in part and overrules in part** the Government's objection, and **adopts in part and overrules in part** R&R #164.¹

I. Joint Defendants' Partial Objection

¹ The Special Master's findings of facts and conclusions of law are reviewed de novo. Fed. R. Civ. P. 53(g)(3)-(4).

The presidential communications privilege (the "privilege") protects from discovery documents "that reflect presidential decisionmaking and deliberations and that the President believes should remain confidential." In re Sealed Case, 121 F.3d 729, 744 (D.C. Cir. 1997). In R&R #164, the Special Master rejected Joint Defendants' argument that the presidential communications privilege applies only to communications concerning a "quintessential, non-delegable Presidential function." R&R #164, at 12-13. Relying upon Judicial Watch, Inc. v. Dep't of Justice, 365 F.3d 1108 (D.C. Cir. 2004) and In re Sealed Case, the Special Master found that:

The presidential communications privilege applies only to ... documents solicited and received by the President or his immediate White House advisors who have 'broad and significant responsibility for investigating and formulating the advice to be given to the President.'

Id. at 12. He did not differentiate between delegable and non-delegable Presidential powers.

Noting that both of the cases upon which the Special Master relied involved presidential powers which were "quintessential and non-delegable," Joint Defendants assert that this is a requirement for application of the privilege.² Joint Defendants interpret the Circuit Court's observation, in In re Sealed Case, that "the President himself must directly exercise the presidential power of

² In re Sealed Case involved communications regarding the President's appointment and removal power. Judicial Watch involved communications regarding the Presidential pardon power. There is no dispute that both cases involve "quintessential and non-delegable" presidential powers.

appointment or removal" as crucial to the Court's extension of the privilege to those communications not involving the President himself. Motion, at 4 (citing In re Sealed Case, at 753). Similarly, they argue that the Circuit Court in Judicial Watch extended the privilege to communications that did not directly involve the President only after determining that the pardoning power, the subject of the communications in issue, was non-delegable. Motion, at 4-5 (citing Judicial Watch, at 1119). Thus, Joint Defendants argue that the standard applied by the Special Master impermissibly expands the scope of the privilege to protect communications beyond those dealing with non-delegable powers of the President.

Both Judicial Watch and In re Sealed Case caution, as Joint Defendants point out, that the privilege should be narrowly construed. Keeping that admonition well in mind, the Court concludes, for the following reasons, that the privilege is not limited, under those two cases, to communications regarding non-delegable presidential powers.

First, there is absolutely no language in either In re Sealed Case or Judicial Watch to suggest that their holdings turned on the fact that a non-delegable power was in question. In both cases, the Circuit Court found that the privilege only applies to documents authored or solicited and received by the President or his immediate White House advisors who have broad and significant

responsibility for investigating and formulating the advice to be given the President. See In re Sealed Case, at 752; Judicial Watch, at 1114. If the Court of Appeals intended to limit the scope of the privilege in the manner Joint Defendants suggest, it would have clearly spelled out such limitation in setting forth the standard for its application. While the presence of non-delegable powers in both cases may have made the case for application of the privilege particularly strong -- because the communications were, by definition, tied to presidential decisionmaking -- there is nothing to suggest that it was a sine qua non of application of the privilege rather than a mere coincidence.

Second, limiting the privilege to only those communications regarding non-delegable powers would undermine the very purposes for which it exists. The privilege "is fundamental to the operation of Government and inextricably rooted in the separation of powers under the Constitution." United States v. Nixon, 418 U.S. 683, 708 (1974); see In re Sealed Case, at 743, 745. It is intended to assure not only that the president has access to frank and candid advice and recommendations, but also that those who assist him are "free to explore alternatives in the process of shaping policies and making decisions and do so in a way many would be unwilling to express except privately." Nixon, at 708. Thus, restricting the scope of the privilege to only those communications to which the President (or his White House advisors) was a direct

participant or to communications regarding a non-delegable power would eviscerate its purpose and limit the President's ability to rely on his advisors to develop candid recommendations on many of the matters directly related to the duties of his office.

Finally, the Court of Appeals explicitly rejected the distinction between delegable and non-delegable Presidential functions which the Joint Defendants now urge, reasoning that such a distinction "draws an arbitrary line, for it provides no reason to conclude that presidential decisions that could have been delegated, but were not, are entitled to less candid or confidential advice than those that could not have been delegated at all." Judicial Watch, at 1123. As the Court of Appeals noted, although the President may have the authority to delegate certain functions or decisions, he may choose not to do so. Id. In such instances, the President is entitled to rely on his advisors to develop frank and candid advice and recommendations.

Accordingly, Joint Defendants' Partial Objection is **overruled**.

II. The Government's Partial Objections³

A. The Special Master's finding that the deliberative process privilege does not apply

³ With respect to any portion of the Government's Partial Objection not addressed herein, the Court adopts the Special Master's findings.

The Government argues that the Special Master erred in finding that seven documents did not meet the standard for application of the deliberative process privilege.

The Court concludes that the Government's objections as to **Challenged Documents 15, 235, 342, and 435** are **overruled**.

The Court further concludes that the Government's objections as to **Challenged Documents 11, 173, and 312** are **sustained**.

B. The Special Master's finding that the presidential communications privilege does not extend to the Vice President

The Government argues that the Special Master erred in refusing to extend the presidential communications privilege to documents prepared to advise the Vice President only, and not the President. Govt's Obj., at 10-11. As previously noted, the Court of Appeals in both In re Sealed Case and Judicial Watch cautioned that the presidential communications privilege should be narrowly construed. Moreover, there is no holding, or even dicta, either in those two cases or in Cheney v. United States District Court for the District of Columbia, 124 S.Ct. 2576 (2004), to suggest that the privilege extends to documents prepared for the purpose of advising the Vice President alone. Thus, in the limited context of this Report and Recommendation, and with no case law upon which to rely, the Court concludes that it would be most inappropriate to take such a major constitutional step. Accordingly, the Court **overrules** the Government's objection and **adopts** the Special

Master's finding that the presidential communications privilege does not protect **Challenged Documents 59, 75, 125, and 245.**

C. The Special Master's analysis of the applicability of the presidential communications privilege to documents protected by the deliberative process privilege

The Government claims that the Special Master erred in considering application of the presidential communications privilege to documents which he also held were protected by the deliberative process privilege. Specifically, the Government argues that the presidential communications privilege is of such constitutional significance that "neither the Special Master nor the Court should unnecessarily overrule the United States' assertion of the ... privilege" to documents already protected from disclosure by the deliberative process privilege. Govt's Obj., at 6.

The Court overrules the Government's objection for the following reasons. First, there is no need to address the validity of the Special Master's reasoning as to the inapplicability of the presidential communications privilege because, as a practical matter, the documents are protected by the deliberative process privilege. Thus, his analysis is not necessary to the decision. Second, the Special Master must address all arguments made by the parties, since some may be upheld or rejected upon appeal to the Court. If the Special Master was overruled on one argument, and he

had failed to address others, precious time and effort would be wasted on remand. Consequently, the Court will not, as the Government suggests, order the Special Master not to consider the presidential communications privilege if other privileges protect a document.

Accordingly, the Government's objections as to **Challenged Documents 59, 75, 113, 125, 143, 245, 246, 329, and 396** (regarding application of the presidential communications privilege) are **overruled**.

III. CONCLUSION

For the foregoing reasons, the Court **overrules** Joint Defendants' Partial Objection, **sustains in part and overrules in part** the Government's Partial Objection, and **adopts in part and overrules in part** R&R #164.

An **Order** will accompany this opinion.

September 9, 2004

/s/
Gladys Kessler
United States District Judge

Copies served on all counsel of record via ECF

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	}	
)	
Plaintiff,)	Civil Action No. 99-CV-2496 (GK)
)	
v.)	Next scheduled appearance:
)	July 15, 2004
PHILIP MORRIS USA INC., f/k/a)	
PHILIP MORRIS INCORPORATED,)	
<i>et al.</i>)	
)	
Defendants.)	
	}	

ORDER #645

Before the Court is Report and Recommendation #164 of the Special Master. Upon consideration of Report and Recommendation #164, Joint Defendants' Partial Objection thereto, and the Government's Partial Objection thereto, and for the reasons set forth in the accompanying Memorandum Opinion, it is this 9th day of September, 2004:

ORDERED that Joint Defendants' Partial Objection is **overruled**; and it is

FURTHER ORDERED that the Government's Partial Objection is **sustained in part and overruled in part**; and it is

FURTHER ORDERED that Report and Recommendation #164 of the Special Master be and hereby is **adopted in part and overruled in part**; and it is

FURTHER ORDERED that Joint Defendants' Third Motion to Compel Certain Documents Listed on Plaintiff's Executive Office of the President and Presidential Records Act Privilege Logs be and hereby is **granted in part and denied in part**; and it is

FURTHER ORDERED that Plaintiff's claims of **deliberative process privilege** be and hereby are **sustained** with respect to the following pages of the following Challenged Documents:

PRA049-0470-0473 [CD 1]
PRA055-0429 [CD 3]
PRA056-0162 [CD 4]
PRA061-0130-0131 [CD 6]
PRA061-0286-0287 [CD 7]
PRA061-1165-1166 [CD 8]

PRA061-1250-1253 [CD 9]
PRA061-1259-1262 [CD 10]
PRA061-1369 [CD 11]
PRA061-1633-1635 [CD 12]
PRA062-0317-0324 [CD 14]
PRA062-0532 [CD 16]
PRA062-0605-0606 [CD 18]
PRA062-0615-0616 [CD 19]
PRA062-0638-0640 [CD 20]
PRA062-0647-0648 [CD 21]
PRA062-0649-0651 [CD 22]
PRA062-0670 [CD 24]
PRA066-0237-0239 [CD 27]
PRA066-0468-0469 [CD 28]
PRA078-0013-0015 [CD 32]
PRA078-0078 [CD 47]
PRA078-0119 [CD 54]
PRA078-0262 [CD 58]
PRA078-0290-0291 [CD 59]
PRA078-0302-0311 [CD 60]
PRA078-0315-0316 [CD 61]
PRA078-0496-0498 [CD 64]
PRA078-0513-0516 [CD 65]
PRA078-0563-0564; 0566-0568; 0570-0579 [CD 72]
PRA078-0668-0672 [CD 75]
PRA078-0691 [CD 76]
PRA078-0807-0815 [CD 81]
PRA078-0895 [CD 87]
PRA078-0905-0906 [CD 91]
PRA078-0945 [CD 95]
PRA078-1011 [CD 106]
PRA078-1012-1013 [CD 107]
PRA078-1016 [CD 108]
PRA078-1086 [CD 113]
PRA078-1132 [CD 120]
PRA078-1133-1134 [CD 121]
PRA078-1170 [CD 125]
PRA078-1182 [CD 130]
PRA078-1211 [CD 134]
PRA078-1236-1237 [CD 138]
PRA078-1298 [CD 141]
PRA078-1306 [CD 142]
PRA078-1317 [CD 143]
PRA078-1421 [CD 147]
PRA078-1422-1423 [CD 148]
PRA078-1529-1530 [CD 151]
PRA078-1580-1581 [CD 155]
PRA078-1595 [redaction - CD 158]
PRA078-1710-1711 [CD 159]
PRA078-1713-1714 [CD 160]
PRA078-1920-1921 [CD 163]
PRA078-1923 [CD 164]
PRA078-1926-1927 [CD 165]
PRA078-1928 [CD 166]
PRA078-1929 [CD 167]
PRA078-1930; 1932-1935 [CD 168]
PRA078-1952-1953 [CD 171]

PRA078-1955-1957 [CD 172]
PRA078-1961-1962 [CD 173]
PRA078-1964-1965 [CD 175]
PRA078-1966-1967 [redaction – CD 176]
PRA078-2009-2011 [CD 177]
PRA078-2048-2050 [CD 179]
PRA078-2150 [CD 180]
PRA078-2151 [CD 181]
PRA078-2184 [CD 182]
PRA078-2192-2200 [CD 184]
PRA078-2383 [CD 187]
PRA078-2450-2451 [CD 198]
PRA078-2459 [CD 200]
PRA078-2493 [CD 203]
PRA078-2673-2675 [CD 211]
PRA078-2748-2762 [CD 212]
PRA078-2763 [CD 213]
PRA078-2850-2851 [CD 216]
PRA078-2859-2860 [CD 217]
PRA078-2966-2967 [CD 218]
PRA078-2970-2971 [CD 220]
PRA078-3101 [CD 222]
PRA078-3145-3146 [CD 223]
PRA079-0688 [CD 227]
PRA079-7423 [CD 230]
PRA090-4477-4478 [CD 232]
PRA090-5423 [CD 233]
PRA170-4024 [CD 236]
PRA170-4204-4207 [CD 237]
PRA171-0136 [CD 243]
PRA171-0145 [CD 245]
PRA171-0208 [CD 246]
PRA171-0222 [CD 247]
PRA171-0241 [CD 248]
PRA171-0245-0246 [CD 249]
PRA171-0288 [CD 254]
PRA171-0352-0353 [CD 256]
PRA171-0415 [CD 263]
PRA171-0439 [CD 264]
PRA171-0510 [CD 267]
PRA171-0524 [CD 268]
PRA171-0526 [CD 269]
PRA171-0528-0531 [CD 270]
PRA171-0545 [CD 274]
PRA171-0548-0549 [CD 276]
PRA171-0771 [redaction – CD 279]
PRA171-0785 [CD 280]
PRA171-0887-0888 [CD 286]
PRA171-0903 [CD 288]
PRA171-0996-0997 [CD 291]
PRA171-1266 [CD 299]
PRA171-1282-1283 [CD 300]
PRA171-1392-1394 [CD 301]
PRA171-1415-1420 [CD 302]
PRA171-1451-1452 [CD 303]
PRA171-1460-1468 [CD 304]
PRA171-1490 [CD 305]

PRA171-1499 [CD 306]
PRA171-1508-1510 [CD 307]
PRA171-1511-1516 [CD 308]
PRA171-1525 [CD 309]
PRA171-1549-1550 [CD 311]
PRA171-1565-1570 [CD 312]
PRA171-1724 [CD 322]
PRA171-1802 [CD 329]
PRA172-0424 [CD 331]
PRA172-2345 [CD 333]
PRA172-2348 [CD 334]
PRA201-0135-0136 [CD 338]
PRA201-0204 [CD 339]
PRA201-0209 [CD 340]
PRA201-1132 [CD 344]
PRA201-1327 [CD 345]
PRA201-1371 [CD 346]
PRA201-1375 [CD 347]
PRA202-0084 [CD 348]
PRA202-0087-0088 [CD 349]
PRA202-0091 [CD 350]
PRA202-0104-0105 [CD 352]
PRA202-0108-0109 [CD 353]
PRA202-0118-0119 [CD 354]
PRA202-0251 [CD 356]
PRA202-0254-0255 [CD 357]
PRA202-0261-0262 [CD 358]
PRA202-0272 [CD 360]
PRA202-0275-0276 [CD 361]
PRA202-0293-0294 [CD 362]
PRA202-0297-0298 [CD 363]
PRA202-0334-0336 [CD 364]
PRA202-0339-0340 [CD 365]
PRA202-0359-0360 [CD 366]
PRA202-0396 [CD 367]
PRA202-0459-0460 [CD 369]
PRA202-0702-0705; 0718-0720 [CD 370]
PRA202-0735-0736 [CD 371]
PRA203-0015 [CD 373]
PRA203-0030-0031 [CD 374]
PRA203-0045-0046 [CD 375]
PRA203-0322-0326 [CD 376]
PRA203-0692-0693 [CD 377]
PRA203-0782-0788 [CD 379]
PRA203-0844-0845 [CD 381]
PRA205-0586 [CD 382]
PRA206-1251-1255 [CD 383]
PRA207-0514-0515 [CD 386]
PRA207-0533-0536 [CD 387]
PRA207-0652-0653 [CD 388]
PRA207-0656-0659 [CD 389]
PRA209-0023 [CD 390]
PRA210-0478 [CD 391]
PRA210-0631 [CD 392]
PRA211-0406-0414 [CD 393]
PRA213-0671-0673 [CD 396]
PRA213-0850-0853 [CD 397]

PRA213-0936-0938 [CD 398]
PRA214-0015 [CD 399]
PRA214-0034-0035 [CD 400]
PRA214-0073 [CD 401]
PRA214-0017 [CD 403]
PRA214-0120 [CD 404]
PRA215-0027-0028 [CD 405]
PRA215-0036-0038 [CD 406]
PRA215-0046-0048 [CD 407]
PRA215-0054 [CD 408]
PRA215-0057-0060 [CD 409]
PRA215-0095-0097 [CD 411]
PRA215-0101-0105 [CD 412]
PRA215-0112-0113 [CD 413]
PRA215-0117-0118 [CD 414]
PRA215-0149-0150 [CD 415]
PRA215-0184-0185 [CD 416]
PRA215-0189 [CD 417]
PRA215-0192 [CD 418]
PRA215-0272-0273 [CD 420]
PRA216-0504 [CD 422]
PRA219-0538-0542 [CD 424]
PRA221-0127-0131 [CD 426]
PRA221-0277-0278 [CD 428]
PRA226-0014 [CD 430]
PRA233-0015 [CD 431]
PRA234-0052-0055 [CD 432]
PRA300-0122 [CD 439]
PRA300-0227 [CD 441]

and it is

FURTHER ORDERED that Plaintiff's claims of **deliberative process privilege** be and hereby are **overruled** with respect to the following pages of the following Challenged Documents:

PRA061-0010 [CD 5]
PRA062-0531 [CD 15]
PRA062-0614 [CD 19]
PRA064-0023-0035 [CD 26]
PRA078-0086-0088 [CD 50]
PRA078-0145-0148 [CD 55]
PRA078-0292 [CD 59]
PRA078-0300-0301 [CD 60]
PRA078-0422-0495 [CD 63]
PRA078-0499 [CD 64]
PRA078-0510-0512; 0517 [CD 65]
PRA078-0523 [CD 67]
PRA078-0565; 0569 [CD 72]
PRA078-0673-0676 [CD 75]
PRA078-0896 [CD 88]
PRA078-0918 [CD 93]
PRA078-0944 [CD 95]
PRA078-0961 [CD 98]
PRA078-1093-1094 [CD 114]
PRA078-1101 [CD 116]

PRA078-1174 [CD 127]
PRA078-1176 [CD 128]
PRA078-1179-1180 [CD 129]
PRA078-1212-1213 [CD 135]
PRA078-1235 [CD 137]
PRA078-1270 [CD 140]
PRA078-1307-1310 [CD 142]
PRA078-1505-1511 [CD 149]
PRA078-1533-1540 [CD 152]
PRA078-1712 [CD 159]
PRA078-1715 [CD 160]
PRA078-1766-1767 [CD 161]
PRA078-1922 [CD 163]
PRA078-1924 [CD 164]
PRA078-1925 [CD 165]
PRA078-1931 [CD 168]
PRA078-2047 [CD 179]
PRA078-2394 [CD 190]
PRA078-2425-2429 [CD 195]
PRA078-2460 [CD 200]
PRA078-2494 [CD 203]
PRA078-2495-2498 [CD 204]
PRA078-2502-2506 [CD 205]
PRA078-2513 [CD 206]
PRA078-2591 [CD 209]
PRA078-2746-2747 [CD 212]
PRA078-2764 [CD 213]
PRA078-2802-2808 [CD 214]
PRA078-2836-2837 [CD 215]
PRA078-2852 [CD 216]
PRA078-3043-3045 [CD 221]
PRA078-3100; 3102 [CD 222]
PRA092-3142 [CD 235]
PRA171-0014-0015 [CD 239]
PRA171-0253 [CD 250]
PRA171-0331 [CD 255]
PRA171-0445-0456 [CD 265]
PRA171-0474-0476 [CD 266]
PRA171-0522-0523 [CD 268]
PRA171-0536 [CD 272]
PRA171-0537 [CD 273]
PRA171-0546 [CD 275]
PRA171-0767 [CD 278]
PRA171-0806 [CD 283]
PRA171-0889 [CD 286]
PRA171-0890-0892 [CD 287]
PRA171-0965 [CD 290]
PRA171-1020 [CD 293]
PRA171-1207-1224 [CD 297]
PRA171-1458-1459 [CD 304]
PRA171-1551-1562 [CD 311]
PRA171-1699-1701 [CD 321]
PRA171-1704-1723 [CD 322]
PRA171-1780 [CD 326]
PRA172-2502-2503 [CD 335]
PRA179-1347-1376 [CD 336]
PRA201-0133-0134 [CD 338]

PRA201-0201-0203 [CD 339]
PRA201-0206-0208 [CD 340]
PRA201-0283 [CD 341]
PRA201-0914-0916 [CD 342]
PRA201-1130-1131 [CD 344]
PRA201-1325-1326 [CD 345]
PRA201-1370; 1372 [CD 346]
PRA201-1372-1374 [CD 347]
PRA202-0082-0083 [CD 348]
PRA202-0085-0086 [CD 349]
PRA202-0089-0090 [CD 350]
PRA202-0102-0103 [CD 352]
PRA202-0106-0107 [CD 353]
PRA202-0116-0117 [CD 354]
PRA202-0232-0234 [CD 355]
PRA202-0249-0255 [CD 356]
PRA202-0253 [CD 357]
PRA202-0259-0260 [CD 358]
PRA202-0270-0271 [CD 360]
PRA202-0273-0274 [CD 361]
PRA202-0291-0292 [CD 362]
PRA202-0295-0296 [CD 363]
PRA202-0332-0333 [CD 364]
PRA202-0337-0338 [CD 365]
PRA202-0357-0358 [CD 366]
PRA202-0394-0395 [CD 367]
PRA202-0457-0458 [CD 369]
PRA202-0733-0734 [CD 371]
PRA203-0028-0029 [CD 374]
PRA203-0694 [CD 377]
PRA203-0831-0837 [CD 380]
PRA205-0584-0585 [CD 382]
PRA206-1258-1266 [CD 384]
PRA207-0512-0513 [CD 386]
PRA207-0531-0532 [CD 387]
PRA207-0650-0651 [CD 388]
PRA207-0654-0655 [CD 389]
PRA210-0477 [CD 391]
PRA210-0629-0630 [CD 392]
PRA211-0404-0405; 0415 [CD 393]
PRA212-0778-0780 [CD 394]
PRA213-0669-0670; 0674 [CD 396]
PRA213-0848-0849 [CD 397]
PRA213-0933-0935 [CD 398]
PRA214-0013-0014 [CD 399]
PRA214-0032-0033 [CD 400]
PRA214-0071-0072 [CD 401]
PRA214-0115-0116 [CD 403]
PRA214-0118-0119 [CD 404]
PRA215-0024-0026 [CD 405]
PRA215-0034-0035 [CD 406]
PRA215-0044-0045 [CD 407]
PRA215-0052-0053 [CD 408]
PRA215-0055-0056 [CD 409]
PRA215-0093-0094 [CD 411]
PRA215-0098-0100 [CD 412]
PRA215-0110-0111 [CD 413]

PRA215-0115-0116 [CD 414]
PRA215-0147-0148 [CD 415]
PRA215-0182-0183 [CD 416]
PRA215-0186-0188 [CD 417]
PRA215-0190-0191 [CD 418]
PRA215-0210-0213 [CD 419]
PRA215-0270-0271 [CD 420]
PRA216-0062-0063 [CD 421]
PRA216-0539 [CD 423]
PRA219-0535-0537 [CD 424]
PRA221-0125-0126 [CD 426]
PRA221-0275-0276; 0279 [CD 428]
PRA233-0013-0014 [CD 431]
PRA234-0050-0051 [CD 432]
PRA237-0126-0128 [CD 435]
PRA300-0120 [CD 439]
PRA300-0228 [CD 441]

and it is

FURTHER ORDERED that Plaintiff's claims of **deliberative process privilege** be and hereby **sustained in part and overruled in part** with respect to pages 0064-0065 of Challenged Document 421; and it is

FURTHER ORDERED that Plaintiff's claims of **presidential communications privilege** be and hereby are **sustained** with respect to the following pages of the following Challenged Documents:

PRA061-1636-1637 [CD 12]
PRA074-1140-1146 [CD 30]
PRA078-0024-0025 [CD 33]
PRA078-0055 [CD 41]
PRA078-0094-0100 [CD 52]
PRA078-0529-0533 [CD 69]
PRA078-0825 [CD 84]
PRA078-1073-1074 [CD 112]
PRA078-1131 [CD 119]
PRA078-1142 [CD 122]
PRA078-1155 [CD 123]
PRA078-1172 [redaction – CD 126]
PRA078-1204 [CD 132]
PRA078-1209 [CD 133]
PRA078-1267 [CD 139]
PRA078-1360-1361 [CD 144]
PRA078-1591-1594 [CD 157]
PRA078-2665-2669 [CD 210]
PRA079-4484 [CD 229]
PRA171-0003-0004 [CD 238]
PRA171-0099-0111 [CD 240]
PRA171-0126-0134 [CD 242]
PRA171-0254 [CD 251]
PRA171-0279-0280 [CD 253]

PRA171-0355 [CD 257]
PRA171-0371-0373 [CD 259]
PRA171-0684-0685 [CD 277]
PRA171-0787 [CD 281]
PRA171-0838-0839 [CD 284]
PRA171-1002-1003 [CD 292]
PRA171-1575-1576 [CD 313]
PRA213-0216-0219 [CD 395]
PRA215-0073-0075 [CD 410]
PRA239-0267 [CD 438]
PRA300-0147-0153 [CD 440]

and it is

FURTHER ORDERED that Plaintiff's claims of **presidential communications privilege** be and hereby are **overruled** with respect to the following pages of the following Challenged Documents:

PRA078-0026 [CD 33]
PRA078-0093 [CD 52]
PRA078-0262 [CD 58]
PRA078-0290-0292 [CD 59]
PRA078-0300-0311 [CD 60]
PRA078-0315-0316 [CD 61]
PRA078-0422-0495 [CD 63]
PRA078-0496-0499 [CD 64]
PRA078-0510-0517 [CD 65]
PRA078-0668-0676 [CD 75]
PRA078-0961 [CD 98]
PRA078-1086 [CD 113]
PRA078-1093-1094 [CD 114]
PRA078-1170 [CD 125]
PRA078-1205 [CD 132]
PRA078-1235 [CD 137]
PRA078-1317 [CD 143]
PRA078-1422-1423 [CD 148]
PRA078-2383 [CD 187]
PRA078-2664 [CD 210]
PRA078-2802-2808 [CD 214]
PRA078-2970-2971 [CD 220]
PRA078-3145-3146 [CD 223]
PRA171-0098 [CD 240]
PRA171-0145 [CD 245]
PRA171-0208 [CD 246]
PRA171-0785 [CD 280]
PRA171-1282-1283 [CD 300]
PRA171-1392-1394 [CD 301]
PRA171-1699-1701 [CD 321]
PRA171-1802 [CD 329]
PRA172-2502-2503 [CD 335]
PRA179-1347-1376 [CD 336]
PRA213-0214-0215 [CD 395]
PRA213-0669-0674 [CD 396]
PRA215-0071-0072; 0076 [CD 410]

PRA239-0265-0266 [CD 438]

and it is

FURTHER ORDERED that Plaintiff's claims of **attorney-client privilege** be and hereby are **sustained** with respect to the following pages of the following Challenged Documents:

PRA202-0087-0088 [CD 349]
PRA202-0104-0105 [CD 352]
PRA202-0108-0109 [CD 353]
PRA202-0275-0276 [CD 361]
PRA213-0672 (in part per R&R #164) [CD 396]

and it is

FURTHER ORDERED that Plaintiff's claims of **attorney-client privilege** be and hereby are **overruled** with respect to the following pages of the following Challenged Documents:

PRA202-0085-0086 [CD 349]
PRA202-0102-0103 [CD 352]
PRA202-0106-0107 [CD 353]
PRA202-0273-0274 [CD 361]
PRA202-0291-0294 [CD 362]
PRA202-0295-0298 [CD 363]
PRA203-0831-0837 [CD 380]
PRA213-0669-0670 [CD 396]
PRA221-0275-0279 [CD 428]

and it is

FURTHER ORDERED that Plaintiff's claims of **work product protection** be and hereby are **overruled** with respect to Challenged Document 361 (PRA202-0273-0276); Challenged Document 362 (PRA202-0291-0294); and Challenged Document 363 (PRA202-0295-0298); and it is

FURTHER ORDERED that Joint Defendants' need outweighs Plaintiff's privilege claims with respect to the following pages of the following Challenged Documents:

PRA061-0130-0131 [CD 6]
PRA061-0286-0287 [CD 7]
PRA061-1165-1166 [CD 8]
PRA066-0468-0469 [CD 28]
PRA078-0014 (n part, consistent with R&R #164) [CD 32]
PRA078-0496-0498 [CD 64]
PRA078-0573-0579 [CD 72]
PRA078-0807-0815 [CD 81]
PRA078-1012-1013 [CD 107]
PRA078-1211 [CD 134]
PRA078-1423 (in part, consistent with R&R #164) [CD 148]
PRA078-1926-1927 [CD 165]

PRA078-1929 [CD 167]
PRA078-1930; 1932-1935 [CD 168]
PRA078-1964-1965 [CD 175]
PRA078-2009-2011 [CD 177]
PRA078-2048-2050 [CD 179]
PRA078-2192-2200 [CD 184]
PRA078-2673-2675 [CD 211]
PRA078-2748-2762 [CD 212]
PRA090-4477-4478 [CD 232]
PRA090-5423 [CD 233]
PRA170-4204-4207 [CD 237]
PRA171-0246 [CD 249]
PRA171-0288 [CD 254]
PRA171-0785 [CD 280]
PRA202-0735-0736 [CD 371]
PRA203-0030-0031 [CD 374]
PRA203-0692-0693 [CD 377]
PRA203-0782-0788 [CD 379]
PRA209-0023 [CD 390]
PRA214-0015 [CD 399]
PRA214-0034-0035 [CD 400]
PRA215-0027-0028 [CD 405]
PRA215-0036-0038 [CD 406]
PRA215-0046-0048 [CD 407]
PRA215-0054 [CD 408]
PRA215-0057-0060 [CD 409]
PRA215-0095-0097 [CD 411]
PRA215-0101-0105 [CD 412]
PRA215-0112-0113 (in part, consistent with R&R #164) [CD 413]
PRA215-0149-0150 [CD 415]
PRA215-0184-0185 [CD 416]
PRA215-0189 [CD 417]
PRA215-0192 [CD 418]
PRA219-0541 (in part, consistent with R&R #164) [CD 424]
PRA221-0127-0131 [CD 426]
PRA233-0015 [CD 431]
PRA234-0052-0055 [CD 432]

and it is

FURTHER ORDERED that Plaintiff shall produce¹ the following pages of the following Challenged Documents to Joint Defendants within five (5) days of the date of this Order:

PRA061-0010 [CD 5]
PRA061-0130-0131 [CD 6]
PRA061-0286-0287 [CD 7]
PRA061-1165-1166 [CD 8]
PRA061-1369 [CD 11]
PRA062-0531 [CD 15]
PRA062-0614 [CD 19]
PRA064-0028-0035 [CD 26]
PRA066-0468-0469 [CD 28]

¹ The Court has not ordered production of any pages found not to be privileged containing only document identification numbers with no substantive information, "hex dumps," or blank pages.

PRA078-0014 (in part, consistent with R&R #164) [CD 32]
PRA078-0086 [CD 50]
PRA078-0093 [CD 52]
PRA078-0145-0147 [CD 55]
PRA078-0300-0301 [CD 60]
PRA078-0422-0428 [CD 63]
PRA078-0496-0499 [CD 64]
PRA078-0510-0512; 0517 [CD 65]
PRA078-0523 [CD 67]
PRA078-0565; 0569; 0573-0579 [CD 72]
PRA078-0807-0815 [CD 81]
PRA078-0918 [CD 93]
PRA078-0944 [CD 95]
PRA078-1012-1013 [CD 107]
PRA078-1093-1094 [CD 114]
PRA078-1101 [CD 116]
PRA078-1174 [CD 127]
PRA078-1176 [CD 128]
PRA078-1179-1180 [CD 129]
PRA078-1211 [CD 134]
PRA078-1212-1213 [CD 135]
PRA078-1235 [CD 138]
PRA078-1270 [CD 140]
PRA078-1423 [CD 148]
PRA078-1505-1511 [CD 149]
PRA078-1533-1540 [CD 152]
PRA078-1712 [CD 159]
PRA078-1715 [CD 160]
PRA078-1766 [CD 161]
PRA078-1922 [CD 163]
PRA078-1924 [CD 164]
PRA078-1925-1927 [CD 165]
PRA078-1929 [CD 167]
PRA078-1930-1935 [CD 168]
PRA078-1961-1962 [CD 173]
PRA078-1964-1965 [CD 175]
PRA078-2009-2011 [CD 177]
PRA078-2047-2050 [CD 179]
PRA078-2192-2200 [CD 184]
PRA078-2394 [CD 190]
PRA078-2425; 2427-2429 [CD 195]
PRA078-2494 [CD 203]
PRA078-2495-2498 [CD 204]
PRA078-2502-2506 [CD 205]
PRA078-2513 [CD 206]
PRA078-2591 [CD 209]
PRA078-2664 [CD 210]
PRA078-2673-2675 [CD 211]
PRA078-2746-2762 [CD 212]
PRA078-2764 [CD 213]
PRA078-2802-2808 [CD 214]
PRA078-2836-2837 [CD 215]
PRA078-2852 [CD 216]
PRA078-3043-3045 [CD 221]
PRA078-3100; 3102 [CD 222]
PRA090-4477-4478 [CD 232]
PRA090-5423 [CD 233]

PRA092-3142 [CD 235]
PRA170-4204-4207 [CD 237]
PRA171-0014-0015 [CD 239]
PRA171-0098 [CD 240]
PRA171-0246 [CD 249]
PRA171-0253 [CD 250]
PRA171-0288 [CD 254]
PRA171-0331 [CD 255]
PRA171-0445-0446 [CD 265]
PRA171-0474 [CD 266]
PRA171-0522-0523 [CD 268]
PRA171-0536 [CD 272]
PRA171-0537 [CD 273]
PRA171-0546 [CD 275]
PRA171-0767 [CD 278]
PRA171-0785 [CD 280]
PRA171-0889 [CD 286]
PRA171-0890-0892 [CD 287]
PRA171-0965 [CD 290]
PRA171-1020 [CD 293]
PRA171-1207-1224 [CD 297]
PRA171-1551; 1553-1562 [CD 311]
PRA171-1565-1570 [CD 312]
PRA171-1699 [CD 321]
PRA171-1704-1723 [CD 322]
PRA171-1780 [CD 326]
PRA172-2502-2503 [CD 335]
PRA201-0203 [CD 339]
PRA201-0208 [CD 340]
PRA201-0283 [CD 341]
PRA201-0916 [CD 342]
PRA201-1374 [CD 347]
PRA202-0234 [CD 355]
PRA202-0252 [CD 356]
PRA202-0361 [CD 366]
PRA202-0397 [CD 367]
PRA202-0735-0736 [CD 371]
PRA203-0030-0031 [CD 374]
PRA203-0692-0693 [CD 377]
PRA203-0782-0788 [CD 379]
PRA209-0023 [CD 390]
PRA211-0415 [CD 393]
PRA214-0015 [CD 399]
PRA214-0034-0035 [CD 400]
PRA215-0026-0028 [CD 405]
PRA215-0036-0038 [CD 406]
PRA215-0046-0048 [CD 407]
PRA215-0054 [CD 408]
PRA215-0057-0060 [CD 409]
PRA215-0095-0097 [CD 411]
PRA215-0100-0106 [CD 412]
PRA215-0112-0114 (consistent with R&R #164) [CD 413]
PRA215-0149-0150 [CD 415]
PRA215-0184-0185 [CD 416]
PRA215-0188-0189 [CD 417]
PRA215-0192 [CD 418]
PRA215-0212-0213 [CD 419]

PRA216-0064-0065 (in part, consistent with R&R #164) [CD 421]
PRA216-0539 [CD 423]
PRA219-0537; 0541; 0543 (in part, consistent with R&R #164) [CD 424]
PRA221-0127-0131 [CD 426]
PRA221-0279 [CD 428]
PRA233-0015 [CD 431]
PRA0052-0052-0055 [CD 432]
PRA237-0127-0128 [CD 435]
PRA300-0120 [CD 439]

/s/

Hon. Gladys Kessler
United States District Judge

Copies served on all counsel of record via ECF